

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO**

**In re:**

DAMARYS FIGUEROA RIVERA  
aka DAMARYS FIGUEROA  
SSN / ITIN: xxx-xx-7042

**Debtor**

**CASE NO. 22-01797-MCF13**

**CHAPTER 13**

**MOTION TO DISMISS**

**TO THE HONORABLE COURT:**

**COMES NOW**, SELECT PORTFOLIO SERVICING, INC., as servicing agent for **DLJ Mortgage Capital, Inc.**, (from now on SPS), through its undersigned attorney and very respectfully moves the Court to dismiss this bankruptcy case for lack of feasibility with the terms and conditions governing this Chapter 13 case:

1. DLJ Mortgage Capital, Inc. is the current entity (e.g. secured creditor) with a mortgage lien on a real property belonging to Debtor and located at 1N PASCUA ST, TERRAZAS, GUAYNABO Puerto Rico 00969 pursuant to 11 U.S.C. §101(10), and, therefore, a party in interest under the instant bankruptcy proceeding.

2. Debtors, DAMARYS FIGUEROA RIVERA aka DAMARYS FIGUEROA, filed this case on 06/23/2022. [DKT. 1]

3. Currently, Debtor is in post-petition arrears with mortgage payments to SPS.

4. A payment in the amount of \$2,937.76 is required as of February 16, 2023 in order to bring the account post-petition current. This amount excludes the \$500.00 legal fees incurred in the filing of the present motion.

5. Section 1307 states that, on request on a party in interest, the Court may dismiss a case

for cause.

6. Debtor's failure to maintain current mortgage payments denotes a serious lack of feasibility, which undermines the probability of completing a chapter 13 plan. "To satisfy "feasibility" requirement, Chapter 13 plan must have reasonable likelihood of success." In re Fantasia, 211 B.R. 420 (BAP 1st Cir. 1997).

7. Finally, SPS has reviewed the file as well as the documents included in the Court's file and to the best of knowledge, information and belief, debtors do not belong to the U.S. Armed Forces, the U.S. Coast Guard, the U.S. Public Health Service or the National Oceanic and Atmospheric Administration, see enclosed certificate.

**WHEREFORE**, for all the above stated, SELECT PORTFOLIO SERVICING, INC., as servicing agent for DLJ Mortgage Capital, Inc., respectfully requests this Honorable Court grants this motion, dismissing this Chapter 13 case for Debtor's failure to make post-petition mortgage payments.

### NOTICE

Within thirty (30) days after service as evidenced by the certification, and additional three (3) days pursuant to Fed. R. Bankr. P. 9006(f) if you were served by mail, any party against whom this paper has been served, or any party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's Office Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the paper will be deemed unopposed and may be granted unless: (i) the requested is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires otherwise, pursuant to Rule 9013-1 (c)(1).

**CERTIFICATE OF SERVICE**

I, **HEREBY CERTIFY**, that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to of such filing to: Trustee, JOSE RAMON CARRION MORALES, ESQ. PO BOX 9023884 SAN JUAN, PR 00902-3884; Debtor's Attorney, ROBERTO FIGUEROA CARRASQUILLO, ESQ. PO BOX 186 CAGUAS, PR 00726-0186; Debtor, DAMARYS FIGUEROA RIVERA aka DAMARYS FIGUEROA HC05 BOX 7440 GUAYNABO, PR 00971 and all participants of CM/ECF.

I also, **HEREBY CERTIFY**, that on this same date, I sent via First Class U.S. Mail a true and exact copy of the foregoing to: Debtor, DAMARYS FIGUEROA RIVERA aka DAMARYS FIGUEROA HC05 BOX 7440 GUAYNABO, PR 00971 and non-CM/ECF participants included in the mailing matrix filed with the Bankruptcy Court.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 21<sup>st</sup> day of August of 2023.

LBRG LAW  
Attorneys for Creditor  
P. O. BOX 9022512  
SAN JUAN, PUERTO RICO 00902

TEL: (787) 724-0230  
FAX: (787) 725-1310

By: /s/ ROBERTO C. LATIMER VALENTIN  
ROBERTO C. LATIMER VALENTIN  
USDC NO. 302408  
Email: latimerrc@lbrglaw.com



## Status Report Pursuant to Servicemembers Civil Relief Act

SSN: XXX-XX-7042  
Birth Date:  
Last Name: FIGUEROA RIVERA  
First Name: DAMARIS  
Middle Name:  
Status As Of: Sep-12-2022  
Certificate ID: PXZJZXCSLLRMVVL

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individuals' active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date			

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual or his/her unit has received early notification to report for active duty			

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty.

Michael V. Sorrento, Director  
Department of Defense - Manpower Data Center  
400 Gigling Rd.  
Seaside, CA 93955

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense (DoD) that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Servicemembers Civil Relief Act (50 USC App. § 3901 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced only a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual was on active duty for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service. Service contact information can be found on the SCRA website's FAQ page (Q35) via this URL: <https://scra.dmdc.osd.mil/scra/#/faqs>. If you have evidence the person was on active duty for the active duty status date and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. § 3921(c).

This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

## More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d) (1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrator (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

## Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate. SCRA protections are for Title 10 and Title 14 active duty records for all the Uniformed Services periods. Title 32 periods of Active Duty are not covered by SCRA, as defined in accordance with 10 USC § 101(d)(1).

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of the SCRA extend beyond the last dates of active duty.

Those who could rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected

**WARNING:** This certificate was provided based on a last name, SSN/date of birth, and active duty status date provided by the requester. Providing erroneous information will cause an erroneous certificate to be provided.



## Status Report Pursuant to Servicemembers Civil Relief Act

SSN: XXX-XX-7042  
Birth Date:  
Last Name: FIGUEROA RIVERA  
First Name: DAMARYS  
Middle Name:  
Status As Of: Sep-12-2022  
Certificate ID: CWDVPFF0W1SXSGP

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**Status Report  
Pursuant to Servicemembers Civil Relief Act****EXHIBIT V**

SSN: XXX-XX-7042  
Birth Date:  
Last Name: FIGUEROA  
First Name: DAMARYS  
Middle Name:  
Status As Of: Sep-12-2022  
Certificate ID: W3MM1N8YC0Q4DHS

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